Supreme Court, U.S.
JUL 29 1971

IN THE

Supreme Court of the United States

October Term, 1971

No. 71-143

BRYAN W. STEVENS, BARBARA STEVENS, STANLEY SAPIRO and MARION SAPIRO,
Petitioners and Appellants,
vs.
PHILIP E. WATSON,
Defendant and Respondent.

PETITION FOR WRIT OF CERTIORARI

MALCOLM H. MACKEY &
STANLEY SAPIRO,
215 W. 15th Street
Los Angeles, California 90013
Attorneys for Petitioners and Appellants.

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Defendant and Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States of America:

The Petition of Bryan W. Stevens, Barbara Stevens, Stanley Sapiro, and Marion Sapiro for a writ of certiorari to review a judgment of the Court of Appeal, Second Appellate District, Division Five, State of California, made and filed by said Court on the 13th day of April, 1971, a copy of which is appended to the original hereof, respectfully shows to this honorable court:

OPINIONS OF THE COURT BELOW

Petitioner's Copy of the Opinion of the Court of Appeal is attached to the original of this Petition as Appendix I. Said opinion is officially reported as *Stevens v. Watson,* 16 Cal. App. 3rd 629. (R-)

A petition was filed for hearing by the Supreme Court of the State of California, which hearing was denied; said denial being communicated on a postcard dated June 9, 1971, stating merely "hearing denied." (R-)

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The date of the judgment sought to be reviewed and the date of its filing by the Court of Appeal was April 13, 1971. An order denying the Petition for Hearing in the California Supreme Court was filed on June 9, 1971. A remittitur was issued by the District Court and filed with the Superior Court of the State of California for the County of Los Angeles on June 14, 1971.

This case involves an interpretation of the equal protection clause of the Fourteenth Amendment of the United States Constitution. It is here contended, among other things, that Article XIII, #2.6 of the California Constitution which grants an enormous tax exemption to private, "nonprofit" golf courses which discriminate as to membership on racial, religious, financial, occupational and social grounds, but which

denies such tax exemption to golf courses operated for profit which are open to the entire public without discrimination, violates the Fourteenth Amendment.

STATUTORY JURISDICTION FOR REVIEW

The statutory provision conferring jurisdiction upon the court to review the judgment of the court below is United States Code, Title 28, Section 1257 (2) and (3).

CONSTITUTIONAL PROVISIONS INVOLVED HEREIN

AMENDMENT XIV: " * * * (N)or shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF PROCEEDINGS

December 1, 1969. Petitioners filed their Petition for Writ of Mandamus and Declaratory Relief and Points and Authorities.

December 19, 1969. Petitioners filed their Notice of Motion for Issuance of Peremptory Writ of Mandamus, Points and Authorities and Declaration of Stanley Sapiro.

February 18, 1970. Respondent Philip Watson, Assessor of the County of Los Angeles, filed his Demurrer and Points and Authorities.

March 3, 1970. Minute Order of Superior Court filed, sustaining demurrer without leave to amend.

March 3, 1970. Order of Dismissal filed.

March 30, 1970. Notice of Appeal and Notice to Prepare Clerk's Transcript filed.

April 2, 1970. Notice to Clerk for Inclusion of Additional Papers in Record on Appeal filed.

April 13, 1970. Judgment of Court of Appeal affirming judgment filed.

June 9, 1971. Order filed by California Supreme Court denying hearing filed.

June 14, 1971. Remittur issued by the Court of Appeal, Second Appellate District, filed in Los Angeles County Superior Court.

QUESTIONS PRESENTED

1. Does Article XIII, Section 2.6 of the California Constitution, which grants a tremendous property tax exemption privilege to private "non-profit" golf clubs, which have strict entrance requirements based on race, religion, nation of birth, occupation, income and social standing, but excludes from said tax privileges golf courses operated for profit which are open to everyone, regardless of their racial, religious, social and financial status, constitute a state "involvement" in such discriminatory entrance requirements, contrary to the equal protection clause of the Fourteenth Amendment?

2. Is the discrimination made in Article XIII, Section 2.6 against golf courses open to the public, without racial, religious and other restrictions, in itself a violation of the Equal protection clause?

3. Leaving aside the religious and racial and other arbitrary discrimination involved, is the granting of the extensive tax exception to private golf courses in itself a violation of the equal protection clause as to other taxpayers equally situated?

4. Is the provision in Article XIII, Section 2.6 which limits its tax privileges to golf courses already in operation for two years a violation of the equal protection clause of the 14th Amendment?

INTRODUCTORY STATEMENT

On November 8, 1960 by Initiative, Article XIII, Section 2.6 was added to the California Constitution. It reads:

> "Sec. 2.6. In assessing real property consisting of one parcel of 10 acres or more and used exclusively for nonprofit golf purposes for at least two successive years prior to the assessment, the assessor shall consider no factor other than those relative to such use. He may, however, take into consideration the existence of any mines, minerals and quarries in the property, including, but not limited to oil, gas and other hydrocarbon substances."

The extent of this tax privilege cannot be argued,

the Respondent, who is Assessor of Los Angeles County, having stated in a motion picture criticizing the tax privilege, that the privileged golf courses are only assessed at 3.5% of market value, whereas surrounding property is assessed at 25% of market value!

For years, both before and after the enactment of Section 2.6, "nonprofit" golf courses have conducted notorious racial and religious discrimination. This discrimination has been common knowledge, but has been exempted from public criticism because of the great financial, political and social power of the members of these clubs. But this discrimination has remained a constant thorn in the side of all minority groups, and all knowledgeable persons who lack the privileges of birth, wallet and social graces of the favored few, but must pay greater taxes themselves to make up for the sizeable loss of revenue.

The Court of Appeal's Opinion claimed that such tax privileges were justified under the Supreme Court's opinion in *Walz v. New York City Tax Com.*, 397 U.S. 664, wherein this Court held that tax exemptions to churches did not violate the 1st Amendment of the Constitution, although the 14th Amendment was not an issue in that case.

In addition to comparing tax privileges to bigoted golf courses to granting tax privileges to churches, the Court of Appeal also held that the 14th Amendment was made inapplicable by the fact that the voters could conceivably have believed the arguments made

by the proponents of the measure. Those arguments were made in a multi-million dollar high-pressure campaign in which the voters were promised relief from smog and other non-existing ecological delights. (During the hearing of the argument the Presiding Judge of the Court of Appeal referred to the campaign for the Amendment as a "swindle"—a dramatic but accurate description.)

The Court of Appeal also held that the 14th Amendment was also circumvented by "State Policy," because *six* (6) *years after* section 2.6 was passed another constitutional amendment was adopted in California, which also gave tax privileges to various land speculators and special interests.

As will be shown, every argument made by the Court of Appeal was contrary to established law as established by repeated decisions of this Court.

FACTS AND ARGUMENTS RELIED UPON FOR THE ALLOWANCE OF THIS PETITION.

A. SUMMARY OF THE PLEADINGS SUMMARY OF THE COMPLAINT

Petitioners filed a Petition for Writ of Mandamus and Declaratory Relief against Respondents Philip E. Watson, Assessor of the County of Los Angeles, State of California and Does I through XXX, on December 1, 1969, in the Superior Court of the State of California for the County of Los Angeles. (R-) The Complaint alleged that the Doe defendants were all golf

clubs owning and operating "nonprofit" golf courses in Los Angeles County eligible for special tax treatment under Article XIII, Section 2.5 of the California Constitution, whose names and identities were known to Respondent Watson, but which he refused to divulge after demand was made.

Petitioners alleged in their first cause of action that they sued on their own behalf as property owners and taxpayers, and on behalf of all other property owners in the County of Los Angeles not members of nonprofit golf courses.

Petitioners further alleged in their first cause of action:

1) By virtue of Article XIII, Section 2.5 Respondent Watson was assessing the Doe defendants' golf courses not at their true market value, or at their highest and best use, but at an artificial and spurious basis, at only a small fraction of their true value.

2) The golf courses of Does I through XXX were on extremely valuable land, invaluable due to the extreme shortage of usable residential, commercial and industrial land. This land was also suitable for much-needed recreational land, especially that needed by children, minority races, and low and middle income groups throughout the County.

3) The golf courses receiving the benefits of Article XIII, Section 2.6 are all private organizations which have strict requirements for entrance, based on arbitrary and capricious limitations as to race, reli-

gion, nation of birth, occupation, income and social graces of applicants. Most of the said golf clubs do not allow Negroes, Mexicans, Jews, Syrians, Orientals, Armenians, Greeks, Turks, and other persons not of Anglo-Saxon heritage to be members, or greatly limit their membership therein, while other clubs have almost exclusively Jewish membership. That prior to his election to the U.S. Senate Mr. George Murphy was denied membership to one of said tax privileged golf clubs on the grounds that he was an actor by occupation.

4) Plaintiffs are not members of or eligible for membership into said golf clubs due to lack of proper financial, occupational and social status, but plaintiffs and all other non-members must pay higher property taxes to make up the deficit caused by the special tax status given said golf clubs.

5) Said tax exemption was discriminatory against new golf courses, in that they had to pay a much higher tax than existing golf courses for at least two years. It was also discriminatory as applied to golf courses under 10 acres, including pitch-and-putt courses.

6) Said tax exemption was discriminatory as not being applicable to golf courses operated for profit which allow all persons, regardless of race, creed, color, bank account, social status, occupation or table manners to membership, which golf courses must pay substantially higher taxes than the favored golf courses, which compete with them for patronage.

7) Written demand was made on Respondent Watson that he ignore the provisions of Article 13, Section 2.6, on the grounds that it violated the 14th Amendment to the U.S. Constitution. Respondent Watson ignored the demand and refused to comply therewith. Plaintiffs have no remedy at law, no administrative remedy and would suffer great and irreparable injury unless Mandamus was granted.

The Second Cause of Action alleged that Petitioners Sapiro were of Jewish extraction, and therefore not eligible for membership in the majority of non-profit golf courses; but were only racially eligible for membership "in certain purportedly separate but equal non-profit golf courses where non-Jewish members are either prohibited or are very limited as to membership."

The Third Cause of Action sought declaratory relief, involving the contentions that Article 13, section 2.6 was violative of the 14th Amendment of the United States Constitution, and denied petitioners and all persons similarly situated equal protection and uniform operation of the law, and was violative of the constitutional right of all persons to carry only the same burden of taxation as other taxpayers and to have their property similarly assessed, and involved an unreasonable, capricious and arbitrary classification, contrary to public policy and the 14th Amendment.

SUMMARY OF THE DEMURRER

Respondent Watson demurred to the complaint on the grounds that it did not state facts sufficient to constitute a cause of and asserted that: (1) Petitioners have no standing to maintain the action; (2) The Court should deny relief because of petitoners' "delay in asserting their claims;" (3) Article 13, Section 2.6 "is not so palpably arbitrary and irrational" as to offend the equal protection clause; (4) Article 13, section 2.6 was clear and certain and not violative of due process of law. (R-)

JUDGMENT OF THE LOWER COURT

The lower court sustained the demurrer without leave to amend, holding:

> "While it appears to the court that Petitioners do have standing to sue and are not barred by laches, no significant state action in the constitutional sense prohibits this constitutional provision." (R-)

No oral testimony was heard, no exhibits introduced, and no Reporter's transcript prepared.

OPINION OF THE COURT OF APPEAL

The Court of Appeal sustained the judgment of the lower court, in a decision cited in 16 Cal. App. 3rd 629 (R-) as *Stevens et al v. Watson.*

The Court of Appeal held as follows:

1) Classifications are proper "if any conceivable

facts could justify them," citing (or mis-citing) *McGowan v. Maryland,* 366 U.S. 420, 6 L. Ed. 2d 393.

2) Section 2.6 is part of a State policy "toward discouraging premature development of urban and near urban land and toward encouraging the preservation of open spaces," citing a separate portion of the Constitution enacted 6 years *after* Article 13, section 2.6 was enacted, (article 28, section 1) and which refers to encouragement of land available for agricultural purposes.

3) The arguments given in the ballot arguments relative to aiding in "decontamination of the air and assist in air pollution control," etc. etc. could be considered in determining if any "conceivable state of facts" could support the legislative classification, even though the law under attack was "not vague or uncertain."

4) The 14th Amendment was not applicable, because it applies only "where the state had delegated to private groups extraordinary powers to perform functions bearing a close relation to sovereignty."

5) Since the State of California does not participate in the operation of the favored golf courses, it "cannot fairly be charged with any responsibility for the private conduct of such golf courses," and therefore the 14th amendment was inapplicable.

6) Because of this Court's decision in *Walz v. Tax Commission,* 397 U.S. 664, 25 L. Ed. 2d 697, holding that the 1st Amendment was not violated by tax ex-

emption to churches, "it follows that a tax exemption such as the one here under consideration does not involve the state in the private conduct of the property owner benefitted by such exemption under the more general proscription of the equal protection clause."

7) Such cases as *Mayflower Farms v. Ten Eyck,* 297 U.S. 266, 80 L. Ed. 675, holding that the 14th amendment is violated by laws granting privileges not available to firms new in the field, do not apply to article 13, section 2.6, because "it was conceivable that such restriction would assure a degree of permanence of such courses and would tend to discourage the use of the section as a temporary tax advantage."

B. ARGUMENT

I.

THE TAX FAVORITISM TO BIGOTED GOLF COURSES CONSTITUTES A SIGNIFICANT STATE INVOLVEMENT IN THE DISCRIMINATION SHOWN.

It would seem so obvious as to require no argument that an extraordinary property tax exemption (requiring about 15% of the normal tax burden) granted only to private clubs which practice vicious racial, religious, financial and social discriminations, but which is denied to golf clubs open to all comers, constitutes a state involvement in the discriminations. In fact it seems an evident truism.

The Court of Appeals has sought to evade this evident conclusion by a judicial declaration wholly without legal precedent or rational basis.

Forging new legal policy, the Court of Appeal asserts:

> "The high standards of conduct imposed by the Fourteenth Amendment are applicable to nominally private activities only where the State has delegated to private groups extraordinary powers to perform functions bearing a close relationship to sovereignty."

The United States Supreme Court has made no such limitation and its decisions go far beyond the tightly limited scope contended for by the Court of Appeal.

In *Griffin v. County School Board,* 377 U.S. 218, 12 L. Ed. 2d, 256, the Supreme Court held that prohibited state involvement existed where tax exemptions were given to private schools including those open only to whites. In *Burton v. Wilmington Parking Authority,* 365 U.S. 705, 6 L. Ed. 2d 45, it was held that leasing of State property to a tenant who excluded Negroes involved the State in an invidious discrimination. In *Reitman v. Mulkey,* 387 U.S. 369, 18 L. Ed. 2d 830, repeal of a state law forbidding racial discrimination in selling private housing was held to violate the Fourteenth Amendment. In *Robinson v. Florida,* 378 U.S. 244, 11 L. Ed. 2d 771, forbidden state involvement was held imposed where an additional burden was placed on private institutions which did not discriminate (as in the case at bar). In *Griffin v. Maryland,* 378 U.S. 130, the Supreme Court held that because affording police protection would be state in-

volvement, government-paid peace officers could not arrest trespassers in a privately owned and operated amusement park which indulged in racial discrimination. In none of these cases was any function even approximating "sovereignty" involved.

Other Federal Courts have followed the Supreme Court's lead in applying the Equal Protection Clause to an infinite variety of cases where there is even indirect and remote assistance by the State to discrimatory organizations. *Wimbish v. Pinellas County* (1956), 342 Fed. 2d 804, 805, held that illegal State involvement existed where a golf course leased from a county by a private party forbad Negroes the use thereof. And see *Seidenbourg v. McSorely's Old Ale House, Inc.* (12-9-69), 308 Fed. Supp. 1253, 1256-1257, where state regulation of the liquor industry was held sufficient to require Equal Protection enforcement as to a privately owned bar.

In all of the above cases the State unsuccessfully claimed that nowhere did it encourage the private persons involved to practice discrimination, and that the State's position was strictly a neutral one.

In *Reitman v. Mulkey, supra,* 387, U.S. 369, 378-380, 18 L. Ed. 2d 830, 836-838, the Supreme Court demolished similar claims made that Proposition 14 nowhere placed the State on the side of racial discrimination, that the State was not financially or otherwise involved, and that only a "neutral" position was taken. The Court held:

> "This Court has never attempted the 'impossible task' of formulating an infallible test for determining whether the State 'in any of its manifestations' has become significantly involved in private discriminations. 'Only by sifting facts and weighing circumstances' on a case-by-case basis can a 'non-obvious involvement of the State in private conduct be attributed to its true significance.' *Burton v. Wilmington Parking Authority,* 365 U.S. 715, 722, 6 L. Ed. 2d 45, 81 S. Ct. 856."

The Court then reviewed various cases including *Burton v. Wilmington Parking Authority, supra,* where "the State neither commanded nor expressly authorized or encouraged the discriminations," and then concluded:

> "None of these cases squarely controls the case we have before us. But they do illustrate the range of situations in which discriminatory state action has been identified. They do exemplify the necessity for a court to assess the potential impact of official action in determining whether the State has significantly involved itself with invidious discrimination."

Does anybody really believe that there is no state involvement in this tremendous tax subsidy which is given to the bigoted private clubs, but withheld from those clubs which are sufficiently American to allow all comers, regardless of race, religion or color?

The involvement is much greater here than in *Griffin v. County School Board, supra,* where tax exemp-

tions were not withheld from those private schools which were open to all. It is certainly greater than in *Burton v. Wilmington Parking Authority, supra,* and *Wimbish v. Pinellas County, supra,* where the discriminatory tenants of the restaurants and golf courses respectively involved received no special tax bonus from the State. It is obviously greater than in *Reitman v. Mulkey, supra,* where no tax privileges were given to homeowners who refuse to sell to racially disfavored persons. It is greater than in *Robinson v. Florida, supra,* where establishments catering to all races only had to install separate plumbing facilities, but had no greater tax burden. It is greater than in *Seidenbourg v. McSorely's Old Ale House, Inc., supra,* where the only state involvement was uniform regulation of the liquor industry. And it certainly exceeds the state involvement in *Griffin v. Maryland, supra,* where all that the State did was to supply a Deputy Sheriff to enforce a trespass law which applied equally to everyone.

Respondent stated in his brief that petitioners "do not claim" that Section 2.6 encourages private discrimination. This is completely untrue. Petitioners contend that stripped of their extraordinary tax favors they now enjoy our bigoted clubs would be compelled by financial necessity, or at least encouraged, to open their doors to the Blacks, Mexicans, Jews, Slavs, Latins, and other races whom Herr Hitler once felt, and the favored golf course operators now feel, to be inherently inferior. They might even open their doors to persons involved in inferior occupations.

Petitioners do not seek to compel, by judicial fiat, the private golf courses to open their ranks to these supposedly inferior individuals. Perhaps the discriminating tax favorites would be able to withstand the burden of paying taxes similar to those paid by every other taxpayer without changing their membership polices. But at least we would be spared the disgusting spectacle of the State imposing a tax subsidy to assist the continuance of the bigoted practices.

II.

THE DISCRIMINATION IN FAVOR OF THE DISCRIMINATING PRIVATE GOLF CLUBS AND AGAINST GOLF CLUBS OPEN TO ALL PERSONS VIOLATES THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT.

In *Robinson v. Florida* (1963), U.S. 153, 156, 12 L. Ed. 2d 771, it was held that the 14th Amendment was violated by an illegal state involvement consisting of an administrative regulation which required that separate facilities be provided in each restaurant for each race employed or served therein.

In the case at bar a much more serious financial burden is placed on the democratically run golf clubs in the form of much heavier property taxes. The inherent injustice and capricious character of this discrimination is self-evident.

The Court of Appeal based its opinion in large part on the legally unique argument that it was bound by the arguments made to the voters in the election

campaign. But every one of these specious arguments about eliminating smog, providing recreation, and encouraging tourists is just as applicable to the courses open to the general public. In fact it is obvious that recreation and tourism are much more encouraged by golf courses on which all persons (including tourists) may play, than golf courses open only to the established few.

As stated in *McLaughlin v. Florida,* 379 U.S. 184, 1980, 13 L. Ed. 2d 222, "Classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any just basis.' Ibid. 'Arbitrary selection can never be justified by calling it classification.'"

To the same effect, requiring that a classification be reasonable in the light of its purpose, see *Carrington v. Rash,* 380 U.S. 89, 93, 13 L. Ed. 2d 675; *Rinaldi v. Yeager,* 384 U.S. 305, 309, 16 L. Ed. 2d 577; *Morey* v. *Doud,* 354 U.S. 457, 465, 1 L. Ed. 2d 1485; *Foster v. Mobile County Hosp. Board,* 5th cir., 398 Fed. 2d 227, 230.

There is no logical reason why the tax privileges should be withheld from the democratically operated golf courses.

The Court of Appeal feebly suggested that "the people could very well have believed that nonprofit golf courses faced financial difficulties, were more

likely to be converted to other uses than courses operated for profit, and for this reason needed special tax assistance to encourage their continued operation."

It is obvious that in fact the People had no such ridiculous beliefs. There was no evidence to this effect, no pleading or contention to that effect, no such issue in the case and it is contrary to common knowledge. The "non profit" golf courses are notoriously wealthy, while those open to the public are equally notoriously in bad financial circumstances.

But even if "the people" had in fact believed that the nonprofit discriminatory golf courses had such bad monetary problems, it would have had no weight whatever on the 14th Amendment.

The people of Maryland may very well all have believed that private school established for whites who disliked integrated schools were more likely to face financial difficulties than schools which accept all races. But in *Griffin v. School Board, supra,* it was specifically held that the State could not grant tax exemptions involving such schools.

Certainly a private golf course, which is by its very nature open only to high income groups, cannot logically claim comparison to private schools insofar as public benefit is concerned. We are in a World gone mad if tax privileges held forbidden to private schools are held acceptable when granted to racially segregated private golf courses, but withheld from democratically operated golf courses!

III.

THIS COURT HAS NEVER UPHELD STATE TAX ADVANTAGES TO RACIALLY DISCRIMINATING GOLF COURSES.

The Court of Appeal quotes isolated portions from three Supreme Court cases which it contends upholds the theory that state tax subsidization of racially and religiously bigoted golf courses is not state involvement. None of them do so.

First, the Court sets out a quotation from *United States v. Guest* (1966), 383 U.S. 745, 755, relative to the fact that the Fourteenth Amendment protects against State, not individual wrongs. It could not have chosen a case more adverse to its contentions. The *Guest* case applied the Equal Protection Clause to an indictment charging six private individuals with conspiring to deprive Negroes of the right to use state facilities without discrimination.

Immediately after the portion quoted by the Court of Appeal the Supreme Court made this very pertinent holding in *Guest*:

> "This is not to say, however, that the involvement of the State need to be either exclusive or direct. In a variety of situations the Court has found state action of a nature sufficient to create rights under the Equal Protection Clause even though the participation of the State was peripheral, or its action was only one of several cooperative forces leading to the constitutional violation. (Cases cited.)"

Among the cases in support of the statement in *Guest* that the participation of the state need only be "peripheral," or "one of several co-operative forces" were *Burton v. Wilmington Parking Authority, Griffin v. Maryland,* and *Robinson v. Florida,* all of which have been cited, *supra.* The *Guest* case was cited in *Seidenbourg v. McSorely's Old Ale House, Inc., supra,* as authority for the rule that the State's involvement need not be exclusive or direct.

The Court next cites *Bell v. Maryland,* 378 U.S. 226, another citation which upholds Appellants' rather than Respondent's contentions. In *Bell* the Supreme Court reversed a judgment convicting Negroes of sit-down strikes in a restaurant which refused to serve them. There is not a word in that case which even hints at support of a state tax subsidy of racially discriminating institutions. The Supreme Court specifically stated in *Bell* on page 288 of 378 U.S.:

> "Under our Constitution distinctions sanctioned by law between citizens because of race, ancestry, color or religion 'are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.' (case cited) We make no racial distinctions between citizens in extracting from them the discharge of public responsibilities: The heaviest duties of citizenship — military service, taxation, obedience to laws — are imposed evenhandedly upon black and white."

The Court in *Bell* would indeed be surprised to

hear it argued that the heavy duty of taxation is really imposed "evenhandedly" upon black and white, Jew and Gentile, Anglo-Saxon and Mexican, where institutions that intentionally exclude non-Aryans have that heavy burden reduced to a mere fraction by the State!

The Court of Appeal's third and last case cited is *Walz v. New York City Tax Com.*, 397 U.S. 664, which *nowhere* involved the Fourteenth Amendment or any claim of discrimination. The *sole* issue there raised was whether the First Amendment, prohibiting establishment of religion, was violated by tax exemption of church property.

But, although the Equal Protection Clause was nowhere involved, the Court in *Walz* made this statement:

> "New York, in common with other states, * * * has not singled out one particular church or religious group or churches as such; rather it grants exemption to all houses of religious worship."

Suppose the exemption was only to Christian — or only to Jewish places of worship — suppose it specifically excluded Negro churches? Certainly both the First and Fourteenth Amendments would be held violated by such an abnormality.

It is strange philosophy indeed which equates racially and socially discriminatory golf clubs to a Church. The writer can go into any church, temple, mosque or other place of worship in town and attend

the services. If he wishes to become a Church member by conversion, he may do so. But he may not enter upon the sacred grounds of the Los Angeles Country Club without summary expulsion; and there is no possible means by which he can achieve membership in this sacred order. In these places of worship Goebbels would be the Messiah, George Wallace the high priest and the Klu Klux Klan the Vestal Virgins.

IV.

EVEN IF THE FAVORED GOLF COURSES WERE NOT OPERATED ON A BASIS OF RACIAL AND RELIGIOUS DISCRIMINATION, THE 14TH AMENDMENT WOULD BE VIOLATED BY THE TAX FAVORITISM INVOLVED.

Let us suppose that the tax-favored private clubs allowed all the supposedly inferior races and religions to enter on equal terms with the supposedly superior races and religions. These clubs would still impose the financial and social qualifications that would make them inaccessible to 99% of the taxpayers in the State. The golf players in California would still receive an illogical tax benefit not received by recreational facilities financially and socially available to all persons — and which do not take up thousands of acres of land so that just a wealthy few might enjoy the facilities. We would still have the State encouraged tax abnormality under which speculating promoters form

private golf courses, and then enjoy windfalls on the sale of the surrounding land.

We would still have a comparatively tiny group of high income club members obtaining tax subsidies paid by the sweat of every taxpayer, poor and rich alike.

The Court of Appeal decision cites *McGowan v. Maryland,* 366 U.S. 420 as authority for the statement that "Classification in Sunday closing law exemption proper if any *conceivable* facts could justify them" (emphasis added).

The Court in *McGowan* made no such ruling. Nowhere is it stated that a classification is proper merely if any conceivable facts could justify it. A *rational* basis is the pre-requisite.

What the Court actually did state in *McGowan,* and is set forth on page 426 of 366 U.S. Reports is: "A statutory discrimination will not be set aside if any state of acts *reasonably* may be conceived to justify it."

The Court of Appeal cites *Carmichael v. Southern Coal & Coke Co.* (1937), 301 U.S. 495, 81 L.Ed. 1245. But the *Carmichael* case also specifically restricts tax exemptions to those "having a rational basis." That alone disqualifies the wholly irrational basis here involved.

The very same Court that decided the *Carmichael* case, and at the very same session, decided the case of

Hartford S.B.I. & Ins. Co. v. Harrison (1937), 301 U.S. 459, 461-462, 91 L.Ed. 1223-1224, where the Supreme Court held:

> "It may be said generally that the equal protection clause means that the rights of all persons must rest under the same rule under similar circumstances, and that it applies to the exercise of all the powers of the state which can effect the individual or his property, including the power of taxation. It does not, however, forbid classification, and the power of the state to classify for purposes of wide range and flexibility, provided always, that the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly situated shall be treated alike.' (cases cited) That is to say mere difference is not enough; the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.' (cases cited) *Discriminations of an unusual character especially careful consideration to determine whether they are obnoxious to the constitutional provisions.*" (emphasis is added.) The Supreme Court conclude in the *Hartford* case:
>
> "Despite the broad range of the State's discretion, it has limit which must be maintained if the constitutional safeguard is not to be overthrown. *Discriminations are not to be supported by mere fanciful conjecture.* (cases cited) *They*

cannot stand as reasonable if they offend the plain standards of common sense." (emphasis is added.).

If there ever was an arbitrary classification without any reasonable or just basis, of an unusual character, which offends "the plain standards of common sense," it is section 2.6, which makes struggling homeowners, businessmen, and farmers pay higher taxes because of the special favoritism shown to a comparatively small handful of comparatively well off country club members.

V.

THE DISCRIMINATION AGAINST GOLF COURSES NOT IN BUSINESS FOR TWO OR MORE YEARS IS IN ITSELF A FATAL VIOLATION OF THE 14TH AMENDMENT.

In *Mayflower Farms v. Ten Eyck*, 297 U.S. 266, 274, 80 L.Ed. 675, it was specifically held that the 14th Amendment was violated by a law which "was an attempt to give an economic advantage to those engaged in a given business at an arbitrary date as against all those who enter the industry after that date." See also, *Morey v. Doud, supra*, 354 U.S. 457, 468, and *Accounting Corp. v. State Board*, 34 Cal. 2d 186, 190.

The Mayflower Farms rule was followed in California cases of *In Re Fassett*, 21 Cal. App. 2d 557 and *Soares v. City of Santa Maria*, 38 Cal. App. 2d 215, 217-218, where it was held that any law which places a greater tax burden on persons new to a business than

on persons already in business violates the 14th Amendment prohibition against discriminatory classification.

This rule is obviously applicable to the law here under attack, which withholds its privileges to golf courses not in business for at least two years.

The Court of Appeal referred to the *Mayflower Farms, Fassett* and *Soares* cases, and attempted to distinguish them by a novel argument without a thread of legal or rational precedence.

The Court held that the rule of the *Mayflower Farms, Fassett* and *Soares* cases did not apply to laws granting special rights to companies two years in business "where it was conceivable that such restriction would assure a degree of permanence of such courses and would tend to discourage the use of the section as a temporary tax advantage."

But the same fallacious argument could have been made in the *Mayflower Farms* cases, to-wit, that the favoritism shown to existing dairies "would assure a degree of permanence" of such dairies, and would "tend to discourage the use of the section" as a temporary advantage. And it could have been made in the *Fassett* and *Soares* cases relating to fees payable by hog ranch operators and solicitors, respectively, on the grounds that such exemptions "would assure a degree of permanency of such hog ranch and soliciting businesses, and would tend to discourage the use of the ordinances as temporary tax advantages."

In none of the above cases was such specious reasoning employed. The ruling in the above cause, in effect, attempts to disapprove the *Mayflower Farms* case, and the other cases following it, and throws this entire field of law into confusion.

The Court of Appeal raised the possibility that since petitioners did not seek to operate golf courses they might not have any standing to raise this point. But since it is not denied that Petitioners had standing to sue as taxpayers under both Federal and State law (*Flast v. Cohen,* 392 U.S. 83, 20 L. Ed. 947; *Knoff v. City of San Francisco,* 1 Cal. App. 3rd 184, 198, 81 Cal. Rptr. 683, S.C. hearing den.) in an action in aid of taxes, once they are in Court for one purpose, they are in Court for all purposes.

It is submitted that an unsupported repudiation of the *Mayflower Farms* case by the Court of Appeal is in itself sufficient to require granting of Certiorari.

VI.

THE 14TH AMENDMENT IS NOT BOUND BY A NON-EXISTING "PUBLIC POLICY" GRANTING SPECIAL TAX PRIVILEGES TO LAND SPECULATORS WHO HOLD PROPERTY OUT OF USE.

On page 7 of its decision the Court of Appeal asserted that section 2.6 was part of an "overall scheme" and "public policy" of encouraging speculators to hold land out of use. (The polite phrase used by the Court of Appeal was "discouraging premature development

of urban and near-urban land and encouraging the preservation of open spaces.")

No such "overall scheme" or "public policy" ever existed; and if it had existed it would certainly have no effect on the United States Constitution. Our Southern states have had well-settled State policies for a century relative to their racial problems, but they had no effect when they came into collision with the 14th Amendment. See for example, *Robinson v. Florida, supra,* 378 U.S. 153, 158, overthrowing regulations which "certainly embody a state policy" (encouraging segregation).

See also, *Levy v. Louisiana,* 391 U.S. 68, 71, holding:

> "(W)e have been extremely sensitive when it comes to basic civil rights (cases cited) and have not hesitated to strike down an invidious classification even though it had history and tradition on its side. (cases cited)"

In truth and in fact no such "public policy," history or tradition has ever existed.

At the time section 2.6 was passed the State public policy toward holding land out of use was set out in Article 17, Section 2 of the California Constitution which reads:

> "The holding of large tracts of land, uncultivated and unimproved, by individuals or corporations, is against public interest, and should be

discouraged by all means not consistent with the rights of private property."

Sections 1 and 3 of Article XVII also express our long-standing state policy in favor of small land holdings and against big speculative holdings.

Big speculators unsuccessfully tried to have Article XVII repealed in the 1968 and 1970 elections, the voters on each occasion retaining that Article by large margins. The truth of the public policy statement in Article XVII, Section 2, is evident. The traditional economic American policy has been to encourage *all* persons to hold land, as contrasted with the European, Asiatic and South American systems, where the greater part of the population has been more tenants on the holdings of a small handful of land barons. The value of that policy has been demonstrated and exemplified by the unmatched growth of our system of home ownership, by the strength of our industrial and agricultural economies, and by the independent political spirit of our citizens.

Years after the passage of section 2.6 certain special interests involved in the ownership of huge corporate farms obtained passage of Article XXVIII, Section I, the so-called "open space" amendment, under which the Irvine Estate, Kern County Land Co., and other huge corporate farms pay substantially lower taxes than small farmers. It is to the credit of Respondent Watson and almost every other assessor in California

that they opposed passage of the "open space" swindle, as they opposed the passage of the outrageous section 2.6 herein involved.

Although at least one court (*Boyne v. State,* 390 Pac. 2d 225) has held such "open space" legislation to be unconstiutionally discriminatory, its propriety is not before this court. It certainly cannot aid subsequently enacted legislation. And Article 28 did not restrict its favors to racially and religiously discriminatory ranches and farms.

But Article XXVIII, Section 1 is the exception rather than the rule. Article XVII still states the State policy. We may well be thankful California has no such perverted "public policy" as the Court of Appeal contends. And if such public policy *did* exist—the policy of favoring bigoted large landholders over small taxpayers, it could hardly survive the force of the United States Constitution.

VII.

THE 14TH AMENDMENT IS NOT AFFECTED BY THE FALSE AND FLAMBOYANT ARGUMENTS MADE BY THE MEASURE'S PROPONENTS.

The Court of Appeal adopted the novel and highly dangerous theory that the 14th Amendment must yield to what the voters might have "considered," "believed," "felt" or "thought" as the result of the flamboyant and highly irresponsible political campaign

made by the measure's sponsors. Considering the millions of dollars spent on fraudulent propaganda about dispelling smog and preventing pollution, the voters might well have considered, believed, felt, and thought that section 2.6 would bring world peace and everlasting life.

During the argument before the Court of Appeal, Petitioners argued that the 14th Amendment was not bound by what the voters might have imagined, that there was no uncertain or ambiguous language to interpret, and further that the campaign itself was an out-and-out swindle. The County Counsel argued otherwise, but the Presiding Justice of the Court of Appeal, the Honorable Otto Kaus, interrupted to state concerning the campaign:

"Of course it was a swindle! Blue skies!"

Yet Judge Kaus concurred with the Court's opinion that conclusions as to what the voters might have felt or considered binds the equal protection clause!

In fact, the voters of California could not have modified the meaning of the 14th Amendment to the United States Constitution even if they wanted to.

In addition the Court of Appeal completely disregarded settled California law that arguments to voters may *not* be utilized where there is no ambiguity or uncertainty in the language used. (*Helping Hand Home v. San Diego,* 26 Cal. App. 2d 452, 457; *Fay v. Dist. Court of Appeal* 200 Cal. 522, 536; *McGuire v. Went-*

worth, 120 Cal. App. 340, 344; *Cal. Tech v. Johnson,* 55 Cal. App. 2d 856, 859; *45 Cal. Jur.* 2d page 670.) In support of its claim that the Court could resort to ballot arguments even where no uncertainty or ambiguity existed the Court cited *Carter v. Com on Qualifications,* 14 Cal. 2d 179, 185-186, and *Ducey v. Dambacher,* 27 Cal. App. 2d 658, 661-662. In truth, neither of those cases supported the Court's statement. Both of them involved interpretations of ambiguous language. In *Carter,* the Court (page 185 of 14 Cal. 2d) referred to, and interpretation was placed on, "concededly vague and uncertain provisions of the Constitution." In *Dulcey,* on page 662 of 27 Cal. App. 2d the Court held that arguments made to voters "may be considered in determining the purpose and intent of an act and in construing its meaning."

In neither case was there even a hint to the effect that arguments to voters may control the 14th Amendment, or that arguments to voters may even be considered where no ambiguity or uncertainty existed in the language used.

The gigantic swindle perpetuated by the initiative's sponsors was described in the October 14, 1970 edition of the Los Angeles Times, the pertinent portion of which stated:

> "And then there was the promotion for a campaign of a few years ago with its catchy slogan 'K e e p California Green.' Conservation-minded voters approved the plan. But all it was was to give a property tax break to private golf courses."

The article concluded by quoting Judge Sumner, Chairman of the State Constitutional Revision Commission as stating:

> "There has to be more responsibility in the voters' pamphlet. It flies in the face of it to have false and misleading statements."

A true copy of that article is attached hereto, marked Appendix "A" and is incorporated herein by reference.

The mere fact voters may be deceived by what Judge Kâus referred to as a swindle does not mean that the Judiciary is bound thereby. Nor does it mean that the Court should disapprove the long line of cases holding that arguments to the voters may *not* be resorted to where there is no ambiguity or uncertainty in the language used.

VIII.

CONCLUSION

In *Parr v. Municipal Court,* 3 Cal. 3d. 861, 866, the California Supreme Court quoted Justice Stephen J. Field as stating: "We cannot shut our eyes to matters of public notoriety and general cognizance. When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men."

It is a matter of public notoriety that racial and religious discrimination of the vilest type has existed

for years prior to enactment of section 2.6 and that it has no way lessened. We know that one golf club receiving the financial favors of section 2.6 is reported to be limited to 250 members, each of whom must have a net worth of over half a million dollars. We know that there are other favored clubs where even pure Anglo-Saxon blood, great financial resources and impeccable social graces are insufficient if the membership applicant does not come from one of the first families of the town.

But for the State subsidy these Un-American practices might have caused a change in policy to acceptance of all comers—the same practice as is utilized by non-favored golf courses which are assessed the same as every one else.

The practice here subsidized is so repugnant to enemies of bigotism and adherants of tax equality alike that it cannot long last. In an era where Hilterian theories of Aryan racial superiority have met judicial disapproval, it is political anachronism. In a period where the tax burden has become unbearable on unfavored homeowners and businessmen (including the unbigoted businessmen operating golf courses open to all customers) it is an economic abomination.

The section here under attack violates the letter, the spirit, the very heart of the 14th Amendment, in that it subsidizes and thus promotes bigotism and discrimination of the most insidious type.

It is submitted that this Honorable Court should

grant a Certiorari so that this matter of first instance may receive the benefit of the deliberations of the highest court in this country.

Respectfully submitted,

MALCOLM H. MACKEY &
STANLEY SAPIRO

By_____
Stanley Sapiro
Attorneys for Petitioners

APPENDIX "A"

Ads Offer Easy Slogans for Tough Ballot Issues

Continued from First Page

tion campaigns are nothing new for California. In fact, this year's crop is tame by older standards.

In the early 1950s, two segments of the oil industry engaged in a bitter fight over changing the oil regulation laws. It was taken to the ballot in what was described as a battle "between the millionaires and the billionaires."

There was no way of explaining the complex issue to the voters. So one of the publicists in the campaign took a simple approach, with the billboards portraying his opponents as pigs slurping out of a trough.

And, there was the proposition for a campaign of a few years ago, with its catchy slogan "Keep California Green." Conservation-minded voters approved the plan. But all it did was give a property tax break to private golf courses.

And, after World War II, the late George McClain, who had an organization of pension-minded old folks, got a pension increase approved by the voters. Down in the body of the proposition was little noticed language that made McClain's assistant, Mrs. Myrtle Williams, the head of the state's social welfare system.

To many experts this all points up the need for reform.

California has a commission to reform the Constitution, the Constitutional Revision Commission which has, since 1966, successfully submitted to the voters measures which have eliminated 25,000 words from the Constitution.

But the chairman, Superior Judge Bruce Sumner of Orange County, warns that while his group is cutting down the Constitution, the Legislature is expanding it even more by submitting to the voters measures that are difficult for them to understand.

The simple slogans worry him, as do the arguments in the official explanatory pamphlet the state sends to the voters. "There has to be more responsibility in the voters' pamphlet" he said. "It flies in the face of it to have false and misleading statements."

Sumner suggested an impartial commission to comment on the arguments for and against the ballot propositions.

Wife Sues Briton Who Defied Peking

LONDON (AP) — Sir Donald Hopson, knighted for his defiant stand when Chinese Red Guards stormed the British Embassy in Peking in 1967, is being sued for divorce by his French-born wife, Denise.

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APPENDIX I

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

BRYAN W. STEVENS, BARBARA STEVENS, STANLEY SAPIRO and MARION SAPIRO, Petitioners and Appellants, v. PHILIP E. WATSON, as Assessor of the County of Los Angeles, Defendant and Respondent.	2d Civ. 36878 S.C. No. 966065

[Filed April 13, 1971, Court of Appeal - Second Dist., Clay Robbins, Jr., Clerk].

APPEAL from a judgment of the Superior Court of Los Angeles County. John L. Cole, Judge. Affirmed.

Malcolm H. Mackey and Stanley Sapiro for Petitioners and Appellants.

John D. Maharg, County Counsel and DeWitt W. Clinton, Deputy County Counsel, for Defendant and Respondent.

Statement of the Case

Appellants bring this action as taxpayers challenging the constitutionality of section 2.6 of article XIII of the California Constitution relating to the property taxation of nonprofit golf courses. Respondent's demurrer to appellants' petition for mandate and declaratory relief against Philip E. Watson as the assessor of Los Angeles County was sustained without leave to amend. Appellants stated for the record that they did not wish to amend, and have appealed from the judgment (order of dismissal).

Section 2.6 of article XIII, added to the California Constitution in 1960 provides: "In assessing real property consisting of one parcel of 10 acres or more and used exclusively for nonprofit golf courses for at least two successive years prior to the assessment, the assessor shall consider no factors other than those relative to such use. He may, however, take into consideration the existence of any mines, minerals and quarries in the property, including, but not limited to oil, gas and other hydrocarbon substances."

The only question presented by this appeal is whether the foregoing provision of the California Constitution is repugnant to the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

Statement of Facts

The facts are those set forth in the petition for writ of mandate and for declaratory relief.

The petition alleges that appellants are residents, citizens and owners of real property in the County of Los Angeles, and as such are taxpayers of such county. They bring the action on their own behalf and on behalf of all other property owners in the county who are not members of nonprofit golf courses. In the second count of the petition it is alleged that appellants Sapiro are of Jewish extraction and are, therefore, not eligible for membership in the majority of nonprofit golf clubs, and are only racially eligible for membership in certain purportedly separate but equal nonprofit golf courses where those of non-Jewish extraction are either prohibited or are very limited as to membership. Joined as "Doe" respondents, but never served, are the nonprofit golf clubs in the County of Los Angeles eligible for assessment under section 2.6 of article XIII.

The petition alleges further that section 2.6 offends the Fourteenth Amendment to the United States Constitution because (I) the "tax exemption is discriminatory against new golf courses, in that they would have to pay a very much higher tax for 'at least two years' than existing golf courses"; (2) it is discriminatory "as applied to golf courses under ten acres including pitch-and-put-courses"; (3) that in giving

favored tax treatment to organizations which discriminate in admissions to membership on grounds of race, religion, national origin, occupation, income and social graces of applicants, the adoption of the measure constitutes "illegal state action" by California in violation of the Fourteenth Amendment; (4) the tax exemption is discriminatory as not being applicable to public golf courses operated for a profit; and (5) that the measure is unconstitutionally vague in that "it does not define what 'factors' can be utilized by assessors in assessing golf courses, and it is impossible to reasonably determine what factors are 'relative to such use.'"

Power of State to Grant Tax Exemptions

The power of the State to select the subjects of taxation or to grant exemptions therefrom is very broad and a legislative determination in this field must be sustained if there is any conceivable state of facts which would support it.

"It is inherent in the exercise of the power to tax that a state be free to select the subjects of taxation and to grant exemptions. Neither due process nor equal protection imposes upon a state any rigid rule of equality of taxation. [Citations.] This Court has repeatedly held that inequalities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitation. [Citations.]

"Like considerations govern exemptions from the operation of a tax imposed on the members of a class. A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it. [Citations.]

"This restriction upon the judicial function, in passing on the constitutionality of statutes, is not artificial or irrational. A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function." (*Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 509-510, 81 L.Ed. 1245, 1253.)

The Supreme Court has recognized the power of legislatures in the regulation of economic and business affairs and has shielded them against attacks under the due process and equal protection clauses. (Cf.

McGowan v. Maryland (1961) 366 U.S. 420, 6 L.Ed. 2d 393, 81 S.Ct. 1101 (classification in Sunday closing law exemption proper if any conceivable facts could justify them); *Railway Express Agency v. New York* (1949) 336 U.S. 106, 109-110, 93 L.Ed. 533 (legislation need not reach every class to which it may have been applied, validating distinction between advertising on vehicles which is not related to the business in which vehicle is engaged, and advertising business in which vehicle is engaged); *Williamson v. Lee Optical of Oklahoma* (1955) 348 U.S. 483, 488-489, 99 L. Ed. 563, 572, 75 S.Ct. 461 (validating distinction between types of eyeglass sellers and stating "The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought . . . 'For protection against abuses by legislatures the people must resort to the polls, not to the courts.'"); *Tigner v. Texas* (1940) 310 U.S. 141, 149, 84 L.Ed. 1124, 1129 (sustaining distinction between agricultural and other economic pursuits in the application of criminal portion of state anti-trust laws).

The Supreme Court of California has sustained legislation if any conceivable state of facts would support classifications contained therein. In *Franklin Life Insurance Co. v. State Board of Equalization* (1965) 63 Cal. 2d 222, upholding the law imposing a

retaliatory tax on foreign insurance companies doing business in California, the court stated (pp. 232-233) relying on *Carmichael v. Southern Coal, supra,* "The United States Supreme Court, however, has long recognized the elementary principle that a distinction in tax statutes between parties does not violate the equal protection clause if such distinction rests upon a rational basis. That court has said, 'Neither due process nor equal protection imposes upon a state any rigid rule of the equality of taxation . . . A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it.' " (See also *Bilyeu v. State Employees' Retirement System,* 58 Cal. 2d 618, 623; *Werner v. Southern Cal. etc. Newspapers,* 35 Cal.2d. 121, 129 et seq.)

We are of the opinion that section 2.6 conforms to the requirements of equal protection under the foregoing principles because there are a number of conceivable states of fact that provide rational support for its provisions. Section 2.6 fits into an overall scheme in which the State's power to tax is directed toward discouraging premature development of urban and near urban land and toward encouraging the preservation of open spaces. (Cf. Ehrman & Flavin, Taxing California Property, 1967 ed., § 413, p. 383.) Further illustrative of this policy is section 1 of article

XXVIII of the California Constitution, adopted November 8, 1966: "The people hereby declare that it is in the best interest of the state to maintain, preserve, conserve and otherwise continue in existence open space lands for the production of food and fiber and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens. The people further declare that assessment practices must be so designed as to permit the continued availability of open space lands for these purposes, and it is the intent of this article to so provide."

In addition to section 2.6 and the various statutes implementing article XXVIII, the foregoing scheme is manifest in the California Land Conservation Act (Gov. Code, §§ 51200 et seq), in section 402.1, Revenue and Taxation Code, and in sections 6950, et seq., Government Code. An order directing the assessor to ignore the provisions of section 2.6 would run counter to the foregoing policy of the State, and, for that reason, should not be granted. (Cf. *Plum v. City of Healdsburg,* 237 Cal.App.2d 308, 318-319.)

The salient purpose of the measure was to encourage the continued operation of a certain class of golf course. The reasons why it was considered desirable to accomplish this purpose can be abstracted from the argument to voters as follows:

(1) The courses were considered beneficial because they provided "wooded, planted, open space areas giv-

ing greenbelt breathing space to California's growing cities."

(2) The continued operation of these courses, it was felt would reduce the need for government to either take over such courses if they ceased operation or in the alternative establish other courses. Either alternative, it was believed, would increase future taxes and governmental expenses.

(3) The continued operation of these courses, it was thought, would preserve the value of surrounding residential property and correspondingly protect that portion of the tax base.

(4) The courses, it was believed, were a tourist and convention attraction. Tourism is a valuable state asset which it was believed was important to foster.

(5) The discontinuance of these courses would add additional player load to the remaining courses.

(6) It was believed that the courses would provide needed mobilization areas in case of disaster, and that the planted areas of the courses would aid in decontamination of the air and assist in air pollution control.

(7) It was felt that the courses contributed to the beauty, health and appeal of our growing metropolitan areas.

Section 2.6 of article XIII provides that golf courses owned by nonprofit corporations, consisting of

at least ten acres, and having operated for two years, are entitled to special property tax treatment. This class of golf courses is treated differently for property tax purposes from other golf courses which do not meet the required specifications. We are of the opinion that such special tax treatment is a proper and reasonable classification. Each of the three factors (nonprofit, ten acres, and two years) is reasonable in relation to the purposes of the law. The People could well have believed that nonprofit golf courses faced greater financial difficulties to survive, were more likely to be converted to other uses than courses operated for profit, and for this reason were in need of special tax assistance to encourage their continued operation. The People could well have believed that only a course containing at least ten acres would be most suitable in furthering the purposes of the section such as the preservation of greenbelt areas and assistance in reducing air pollution. The People could very well have imposed the two-year restriction in the belief that such restriction would assure that each such golf course has demonstrated a degree of permanence and that such restriction would tend to discourage the use of the section as a temporary tax advantage.

While the language of section 2.6, as it relates to the grant of special tax treatment to golf courses of the class here under consideration, *is not vague or uncertain,* we find no impropriety in resorting to the ballot arguments presented to the electorate in sup-

port of its adoption to ascertain whether a "conceivable state of facts" is present to support the legislative classification. (Cf. *Carter v. Coms. on Qualifications etc.*, 14 Cal.2d 179, 185-186; *Ducey v. Dambacher*, 27 Cal.App.2d 658, 661-662.)

We are of the opinion that the ballot arguments disclose a "conceivable state of facts" to support the legislative classification, and, accordingly establish that there is no denial of equal protection.

Appellants urge that "The state became significantly involved in private discrimination by the enactment of section 2.6." They cite and rely on *Reitman v. Mulkey*, 387 U.S. 369, 18 L.Ed.2d 830, 87 S.Ct. 1627, in support of this argument. (See also *Mulkey v. Reitman*, 64 Cal.2d 529, affirmed in *Reitman v. Mulkey, supra.*)

Mulkey involved a direct attack by a prospective lessee on the racial discrimination of a property owner in refusing to lease his real property under the provisions of a constitutional amendment commonly referred to as Proposition 14, wherein a property owner was given "absolute discretion" to choose the person with whom he would deal in the sale or lease of his real property. The United States Supreme Court, as well as the California Supreme Court, struck down the constitutional amendment (art. I, § 26) on the grounds that it constituted an extension of prohibited state action, and that California was jointly responsi-

ble for that conduct because in adopting Proposition 14, the State authorized and encouraged racial discrimination, made possible discrimination that, prior to its adoption, was illegal, and established a purported constitutional right to privately discriminate on grounds which admittedly would be unavailable under the Fourteenth Amendment should state action be involved. We do not believe that the rule laid down in *Mulkey* is decisive of the question presented here. It was stated in *Mulkey v. Reitman* that:

"The parties generally concede that in an organized and regulated society the state or its subdivisions play some part in most, if not all, so-called private transactions, and it must be acknowledged, without specifically enumerating them, that many of the rights and duties arising out of the transfer of an interest in real property are related to or dependent upon the state or local governments. But it is not the mere fact that in some manner the state is involved, however remotely, with which we are concerned. It is only where the state is significantly involved that the prohibitions of the equal protection clause are invoked. The Supreme Court in *Burton v. Wilmington Parking Authority* (1961) 365 U.S. 715, stated the proposition in the following language at page 722 [81 S.Ct. 856, 6 L.Ed.2d 45]: '. . . private conduct abridging individual rights does no violence to the Equal Protection Clause unless to some significant extent the State in any of its manifestations has been found to have been involved

in it.' That proscribed state involvement is not to be limited to direct conduct on the part of its employees, agents and representatives is made apparent by the court's further statement at page 722: 'Only by sifting facts and weighing circumstances can the non-obvious involvement of the State in private conduct be attributed its true significance.' More recently the Supreme Court has stated: 'Conduct that is formally "private" may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action.' [Citation.]

"However subtle may be the state conduct which is deemed 'significant,' it must nevertheless constitute action rather than inaction. The equal protection clause and, in fact, the whole of the Fourteenth Amendment, is prohibitory in nature and we are not prepared to hold, as has been urged, that it has been or should be construed to impose upon the state an obligation to take positive action in an area where it is not otherwise committed to act. Urged in support of such propositions is *James v. Marinship Corporation,* 25 Cal.2d 721 [155 P.2d 329, 160 A.L.R. 900]. But the prior state commitment in that case is clear. We held that a so-called private labor union could not racially discriminate against those who wished to become members, but we first concluded that the union, because it had obtained a monopoly on the labor supply, was like a public service business which, under

the law of the state, was precluded from discriminating on the basis of race. Likewise, in *Jackson v. Pasadena City School Dist., supra*, 59 Cal.2d 876, the state, because it had undertaken through school districts to provide educational facilities to the youth of the state, was required to do so in a manner which avoided segregation and unreasonable racial imbalance in its schools.

"The problem thus becomes one of ascertaining positive state action of a degree sufficient to be deemed significant in the accomplishment of the recognized and admitted discrimination." (64 Cal.2d 529, 536-537.)

The provisions of section 2.6 are neutral with respect to the manner in which certain property is to be assessed for tax purposes. The section makes no distinction based upon what class of persons or entities own the property, or whether the property is or is not open to the public, or on the basis of any conduct of any kind of the owners or occupants. If the property qualifies under section 2.6, the owner is entitled to its benefits without regard to race, color, creed, or national origin. The Fourteenth Amendment proscribes conduct of the state or conduct for which the state can fairly be held responsible. It protects the individual against state action and not against wrongs done by individuals. (*United States v. Guest* (1966) 383 U.S. 745, 755, 16 L.Ed.2d 239, 247-248, 86 S.Ct. 1170.) As was said in *Bell v. Maryland,* 378 U.S.

226, 313, 12 L.Ed.2d 822, 848, 84 S.Ct. 1814: "Prejudice and bigotry in any form are regrettable, but it is the constitutional right of every person to close his home or club to any person or to choose his social intimates and business partners solely on the basis of personal prejudices including race. These and other rights pertaining to privacy and private association are themselves constitutionally protected liberties.

"We deal here, however, with a claim of equal access to public accommodations. This is not a claim which significantly impinges upon personal associational interest; nor is it a claim infringing upon the control of private property not dedicated to public use." (Concurring opinion by Mr. Justice Goldberg.) Unlike the claim in *Bell,* the claim here does impinge upon personal associational interests and does seek to abridge the constitutional right of every person to close his club to any person.

The high standards of conduct imposed upon the states by the Fourteenth Amendment are applicable to nominally private activities where the state has delegated to private groups extraordinary powers to perform functions bearing a close relationship to sovereignty, such as the combination of electoral officials and "private political parties" whose function was the systematic exclusion of Negroes from participation in the only meaningful elections in certain southern states, as in *Terry v. Adams* (1953) 345 U.S. 461, 97 L.Ed. 1152; or the criminal prosecution of a citizen for

attempting to express her religious views on a sidewalk open to the public at the instance of a "private" corporation whose authorized function and powers were the same as given by the state to all municipalities, as in *Marsh v. Alabama* 1946) 326 U.S. 501, 90 L.Ed. 265; or the conduct of "private" institutions in excluding Negroes from access to services intended for the public generally on government owned property and with substantial participation of the government, financial and otherwise, such as was involved in *Burton v. Wilmington Parking Authority* (1961) 365 U.S. 715, 6 L.Ed. 2d 45, and *Evans v. Newton* (1966) 382 U.S. 296, 15 L.Ed. 2d 373; or the criminal prosecution of Negroes excluded from places of public accommodations in localities where the state either required such exclusion by law, as in *Peterson v. Greenville* (1936) 373 U.S. 244, 10 L.Ed. 2d 323; or imposed an additional burden by law on those who did not wish to discriminate, as in *Robinson v. Florida* (1963) 378 U.S. 153, 12 L.Ed. 2d 771; or the conduct by the state, either through zoning ordinance, as in *Buchanan v. Warley* (1917) 245 U.S. 60, 62 L.Ed. 149, or by court compulsion, as in *Shelley v. Kraemer* (1948) 334 U.S. 1, 92 L.Ed. 1161, to prohibit willing sellers and buyers from transferring residential property situated in white neighborhoods.

None of the foregoing standards of conduct has any application to the conduct of private clubs in selecting their membership nor to section 2.6, representing a broad, neutral state policy of conservation of

property used for golf courses. It cannot be said that the operation and management of these private golf courses is in any sense connected with a governmental function. California does not participate in any way in such operation or management, and cannot fairly be charged with any responsibility for the private conduct of the owners of such golf courses. Since section 2.6 is in furtherance of a proper public purpose and tends to promote the general welfare, the fact that it may incidentally benefit some person who may practice discrimination is immaterial. Any serious argument to the contrary is answered by the decision in *Walz v. Tax Commission* (1970) 397 U.S. 664, 672-675, 25 L.Ed. 2d 697, 703, 90 S. Ct. 1409, where the United States Supreme Court stated:

"The legislative purpose of a property tax exemption is neither the advancement nor the inhibition of religion; it is neither sponsorship nor hostility. New York, in common with the other States, has determined that certain entities that exist in a harmonious relationship to the community at large, and that foster its 'moral or mental improvement,' should not be inhibited in their activities by property taxation or the hazard of loss of those properties for nonpayment of taxes. It has not singled out one particular church or religious group or even churches as such; rather, it has granted exemption to all houses of religious worship within a broad class of property owned by nonprofit, quasi-public corporations which include hospitals, libraries, playgrounds, scientific, professional,

historical, and patriotic groups. The State has an affirmative policy that considers these groups as beneficial and stabilizing the influences in community life and finds this classification useful, desirable, and in the public interest. Qualification for tax exemption is not perpetual or immutable; some tax exempt groups lose that status when their activities take them outside the classification and new entities can come into being and qualify for exemption.

"The grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state. No one has ever suggested that tax exemption has converted libraries, art galleries, or hospitals into arms of the state or put employees 'on the public payroll.' There is no genuine nexus between tax exemption and establishment of religion. . . ."

In a concurring opinion, Mr. Justice Brennan stated (397 U.S. at p. 689): "[G]overnment grants exemptions to religious organizations because they uniquely contribute to the pluralism of American society by their religious activities. Government may properly include religious institutions among the variety of private, nonprofit groups that receive tax exemptions, for each group contributes to the diversity of association, viewpoint and enterprise essential to a vigorous, pluralistic society."

Since a tax exemption does not sufficiently involve

the state in the religious activities of the beneficiary of such an exemption to constitute a violation of the specific prohibitions of the First Amendment, it follows that a tax exemption such as the one here under consideration does not involve the state in the private conduct of the property owner benefited by such exemption under the more general proscription of the equal protection clause.

Appellants urge that that portion of section 2.6 which grants the tax exemption to those golf courses which have been established and which have been operating for at least two successive years prior to the assessment is sufficient alone to render the entire section unconstitutional, citing and relying on *Mayflower Farms v. Ten Eyck* (1935) 297 U.S. 266, 273-274, 80 L.Ed. 675, 679; *Accounting Corp. v. St. Bd. of Accountancy* (1949) 34 Cal. 2d 186, 190; *In re Fassett*, 21 Cal. App. 2d 557, 560-561; and *Soares v. City of Santa Maria*, 38 Cal. App. 2d 215, 217-218.

In *Mayflower Farms* it was held that a provision of a state Milk Control Law denying to persons embarking in the business of milk dealer after the date when the act took effect the benefit of a differential in the minimum price at which dealers may sell milk to stores and stores may sell to sonsumers, in favor of milk dealers not having a well advertised tradename, denies the equal protection of the laws where not shown to have any relation to public health or welfare, or to operate to discourage monopoly, or to be aimed at any abuse cognizable by law in the milk business.

In *Accounting Corporation* the Supreme Court held that the proviso to Business and Professions Code section 5062, exempting from the licensing requirements for public accountants all domestic corporations which were engaged in the practice of accounting for three years prior to the effective date of the statute, and excluding all other corporations from such practice, is unreasonable and arbitrary since the competence of a public accounting corporation depends, not on the length of time the corporation has been engaged in the practice of accounting, but on the experience, training and integrity of its personnel at the moment.

In *Soares* the court held a city ordinance discriminatory which provided for a license fee of $20 per quarter for a solicitor who has been in business at least one year, but five times that amount for one who has been in business for less than that time. The court, quoting from *In re Fassett,* 21 Cal. App. 2d 557, said in part: " 'We are unable to see any natural, intrinsic or reasonable distinction between persons who have been engaged in that business at a particular location for a period of one year and others who have been thus established for a shorter period of time, perhaps only for eleven months and twenty-nine days . . .' " (*Soares v. City of Santa Maria, supra,* 38 Cal. App. 2d 215, 217-218.)

We do not believe the foregoing authorities are controlling where, as here, the sovereign has undertaken to grant a partial tax exemption on real property and exclusively for nonprofit golf course purposes for at

least two successive years prior to the assessment, where it was conceivable that such restriction would assure a degree of permanence of such courses and would tend to discourage the use of the section as a temporary tax advantage. At was said in *Williamson v. Lee Optical of Oklahoma* (1955) 348 U.S. 483, 488, 99 L.Ed. 563, 572, 75 S. Ct. 461, if such legislation prove "unwise, improvident, or out of harmany with a particular school of thought," the remedy lies with the electorate at the polls, and not with the courts. There is also a serious question as to whether appellants have status to challenge the section on this ground, inasmuch as they have not shown that they are members of the class discriminated against. (Cf. *In re Willing,* 12 Cal. 2d 591, 597-598; *Ray v. Parker,* 15 Cal. 2d 275, 283; *Du Bois v. Land,* 212 Cal. App. 2d 563, 567.)

Claimed Vagueness of Section 2.6

Appellants urge that section 2.6 of article XIII is unconstitutional because it is vague, ambiguous and unintelligible.

A state constitutional provision or statute must be definite and its meaning ascertainable by those whose rights and duties it affects. (*Perez v. Sharp,* 32 Cal. 2d 711, 728; 3 Witkin, Summary of Cal. Law, Constitutional Law, §388, pp. 1827-1828.) Reasonable certainty is all that is required. A statute will not be held void for uncertainty if any reasonable and practical construction can be given its language. (*American Civil Liberties Union v. Board of Education,* 59 Cal. 2d 203, 218.)

The following provisions of various statutory enactments have been held to be sufficiently clear so as to avoid the constitutional disability of vagueness: ". . . make diligent effort to find the owner" (*Pacific Coast Dairy v. Police Court,* 214 Cal. 668, 672, 677); "unreasonable waste of natural gas" (*People v. Associated Oil Co.,* 211 Cal. 93, 107-108); "unsafe and unreasonable rate of speed" (*Ex parte Daniels,* 183 Cal. 636, 643); " '*unjustifiable* physical pain or mental suffering' " (*People v. Curtiss,* 116 Cal. App. (Supp.) 771, 775); " 'without due caution and circumspection' " (*People v. Crossan,* 87 Cal. App. 5, 8); " 'a wilful or a wanton disregard for the safety of persons' " (*People v. Smith,* 36 Cal. App. 2d (Supp.) 748, 749-750); " 'imminent danger of *becoming addicted*' "

(*People v. Victor,* 62 Cal. 2d 280, 300); " 'questionable financial responsibility' " used as a basis for revocation of dry cleaner's license (*Duskin v. State Board of Dry Cleaners,* 58 Cal. 2d 155, 159-160); the terms "oil pool" and "oil field" used in connection with regulation of drilling activities (*Wooton v. Bush,* 41 Cal. 2d 460, 464-465); and " 'will insure consumers a sufficient quality of pure and wholesome milk' " (*Jersey Maid Milk Products Co. v. Brock,* 13 Cal. 2d 620, 656).

The assessor, under the provisions of section 2.6, in assessing property consisting of one parcel of ten acres or more and used exclusively for nonprofit golf course purposes, is directed to consider no factors other than those relative to such use, except that he may take into consideration the existence of mines, minerals and quarries in the property. This constitutes a short and reasonably clear statement of an appraisal standard which directs the assessor not to consider such factors as potential usability of the property for industrial, commercial or residential purposes. Such standard, we believe, is sufficiently definite to provide a guideline for the conduct of the assessor in appraising the value of the property for tax purposes. (Cf. *Duskin v. State Board of Dry Cleaners,* 58 Cal. 2d 155, 160.)

The judgment is affirmed.

FRAMPTON, J.*

We consur:

KAUS, P. J.
AISO, J.

*Retired judge of the superior court sitting under assignment by the Chairman of the Judicial Council.

Supreme Court, U.S.
FILED
AUG 23 1971
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IN THE

Supreme Court of the United States

October Term, 1971

~~No. 143~~ 71 - 143

BRYAN W. STEVENS, BARBARA STEVENS, STANLEY SAPIRO and MARION SAPIRO,
Petitioners and Appellants,
vs.
PHILIP E. WATSON, as Assessor of the County of Los Angeles,
Defendant and Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

JOHN D. MAHARG,
County Counsel
DeWITT W. CLINTON,
Deputy County Counsel
648 Hall of Administration
500 West Temple Street
Los Angeles, California 90012
Attorneys for Defendant and Respondent.

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OPINIONS OF THE COURT BELOW

The opinion of the court (California Court of Appeal, Second Appellate District) which rendered the judgment sought to be reviewed is reported in 16 Cal. App. 3rd 629, 94 Cal. Rptr. 190 (1971).[1] Petitioners did not file a Petition for Rehearing following the decision of that Court. Under California appellate practice, therefore, petitioners were not en-

[1]References to the opinion herein will be to the text appearing in Appendix I to the Petition for Certiorari, cited "App. ....."

titled in petitioning for hearing in the California Supreme Court to rely upon any claim that material facts were omitted from or incorrectly stated in the opinion of the Court of Appeal. (California Rules of Court, Rule 29(b)).[2]

The petition for hearing in the Supreme Court of California was denied by order of June 9, 1970. Thus by final order of the California appellate courts the judgment of the California Superior Court, sustaining Respondent Watson's demurrer to the Petition for Writ of Mandate and Declaratory Relief, without leave to amend, has been affirmed.

CONSTITUTIONAL PROVISIONS INVOLVED

At issue is Section 2.6 of Article XIII of the California Constitution, adopted by the people as an initiative measure in 1960, providing that in assessing real property used for at least two years exclusively for non-profit golf courses, the assessor shall consider no factors other than those relative to such use.[3] Section 2.6 is here challenged as a violation of the Equal Protection Clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

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[2]Rule 29(b) provides: [Examination of record] On petition for hearing the Supreme Court will not examine the record for error unless the petition shows that substantial issues of law or fact were incorrectly stated or were not considered in the opinion of the Court of Appeal and that such issues were raised in the briefs and set forth in a petition for rehearing in the Court of Appeal. [As amended affective July 1, 1970; previously amended effective Nov. 11, 1966.]

[3]The full text of the measure is set forth in the Petition for Certiorari (p. 5) and in the opinion of the California Court (App. p. 2) .

RESTATEMENT OF THE QUESTIONS PRESENTED

1. Does a provision of the California Constitution, construed by the California Court to represent a broad, neutral state policy of conservation of property used exclusively for non-profit golf courses by establishing a partial tax exemption for such property, violate the Equal Protection Clause because it may incidentally benefit private golf clubs which arbitrarily discriminate in their membership policies?

2. Does such a provision of the California Constitution violate the Equal Protection Clause because it applies only to non-profit golf courses in operation for at least two years, and if so, do petitioners who do not own or have any interest in golf courses operated for less than two years, have standing to attack the measure on this ground?

STATEMENT OF THE CASE

Petitioners have not requested the Court below to certify any record to this Court. Inasmuch as petitioners did not file a Petition for Rehearing following the decision and opinion of the Court below, we assume they do not contend that material facts were omitted from or incorrectly stated in the opinion. (App. 2-4; n. 2, *supra*)

In any event, the only facts appearing in the Record are the allegations of the Petitioners' pleading in the trial court. Respondent accepts the sum-

mary thereof appearing at pages 7 to 10 of the Petition for Certiorari.[4]

The only party Respondent is Philip E. Watson, the Tax Assessor of Los Angeles County, who was the only such party served and who appeared in the proceedings below. Named as fictitious "Doe" respondents, but who were never served and who did not appear, were the non-profit golf clubs in Los Angeles County eligible for assessment under Section 2.6 (Opinion Below, App. at p. 3). The Courts below did not consider whether petitioners' claim failed in any event for lack of jurisdiction of the subject matter because of the failure to join and serve such golf clubs as indispensable parties.

Petitioners have sued only in their capacity as property owners and taxpayers. They do not claim to own any property interest in any golf courses which do not qualify under Section 2.6, i.e., profit making golf courses, or of non-profit golf courses of less than ten acres or which have been in operation less than two years.

The Court below assumed, *sub silentio,* that petitioners as taxpayers, had standing to attack Section

[4]We assume that the Court will not consider Petitioners' frequent excursions outside the Record in their references to motion pictures (pp. 5-6), newspaper articles (p.34), the alleged notoriety of racial and religious discrimination of golf course operators and its immunity from public criticism because of the extreme financial, political and social power of the discriminators (p. 6), equating golf course operators to Herr Hitler (p. 17) and to the golf courses as places where "Goebbels would be the Messiah, George Wallace the high priest and the Ku Klux Klan the Vestal Virgins" (p. 24). We treat these allegations, wholly unsupported in the record, as pejorative hyperbole, warranting no response.

2.6 on all grounds urged except it questions, as does Respondent, petitioners' standing to raise question number 4 in their Petition (p. 5), that Section 2.6 offends equal protection in that it does not apply to non-profit golf courses operating for less than two years because petitioners have no interest in any such property.

ARGUMENT

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

1. As authoritatively construed by the California Court, the purpose, scope, and operative effect of Section 2.6 of Article XIII of the California Constitution is in furtherance of a neutral State policy of conservation of property used for golf courses, a proper public purpose, and tends to promote the general welfare.

In its opinion the Court below considered in detail the purpose, scope, and operative effect of Section 2.6. The Court found that the Section "fits into an over-all plan in which the State's power to tax is directed toward discouraging premature development of urban and near-urban land and toward encouraging the preservation of open spaces." (App. p. 7). The Court found that the order sought by Petitioners directing the Tax Assessor to ignore the provisions of Section 2.6 would run counter to the conservation policies of the State of California, as

illustrated by Section 1 of Article XXVIII of the California Constitution as well as in the California Land Conservation Act (Gov't Code, Section 51,200 et seq.) and in cited provisions of the California Revenue and Taxation and Government Codes (App. p. 8). The Court found that the "salient purpose of the measure was to encourage the continued operation of a certain class of golf courses"; set forth in detail seven reasons why the measure was considered desirable to accomplish these purposes; and concluded that the provisions of Section 2.6 were reasonably designed for the accomplishment of such purposes.

We respectfully submit that this Court should give careful consideration and substantial weight to the authoritative interpretation by the California Court of a provision of the California Constitution.

> (*Reitman v. Mulkey* (1967) 387 U.S. 369, 373-376).

Just as the Court in *Reitman* decided there was "no sound reason for rejecting" the judgment of the California Court as to the purpose, meaning and effect of the provision of the California Constitution there involved, there is no reason here for rejecting the finding of the California Court here as to the meaning, purpose and effect of Section 2.6.

2. Section 2.6 is clearly a valid exercise of the broad power of the State to select the subjects of taxation and to grant exemptions therefrom.

The measure under attack is a narrow provision of the California Constitution and a rather routine example of the exercise by the State of its inherent power to select the subjects of taxation and to grant exemptions therefrom. The opinion below sets forth the "elementary principle" that discrimination in tax statutes between parties does no violence to the Equal Protection Clause if the distinction rests on a rational basis. The Court below sets forth in detail a "number of conceivable states of fact that provide rational support for its provisions" (App. pp. 7-10), all that is required to satisfy the Equal Protection Clause. The Court below could have reached no other conclusion with fidelity to the unchallenged line of decisions of this Court starting from *Carmichael v. Southern Coal & Coke Co.* (1937) 301 U.S. 495, than the one it reached: the legislative classifications made in Section 2.6, based upon the three factors of non-profit, ten acres, and two years were proper and reasonable in relation to the purposes of the law. (App. p. 10).

In these circumstances no sound reason exists for granting review to consider any of the questions of classification raised in questions 2, 3 and 4 at page 5 of the Petition for Certiorari.

3. The partial tax exemption afforded by Section 2.6 in furtherance of a neutral State policy of conservation of property used for golf courses does not offend the Equal Protection Clause because it may incidentally benefit private golf clubs which arbitrarily discriminate in their membership policies.

The principal ground relied upon by Petitioners in their Petition relates to question 1 of the questions presented (Petition for Certiorari p. 4). That question is one of "first instance", as claimed by Petitioner (Petition for Certiorari p. 37) only in the sense that it relates to private, non-profit golf courses and because it is a most tendentious characterization of the purpose, meaning and effect of Section 2.6 — a characterization entirely at odds with the interpretation placed on it by the California Court.

Petitioners' argument on this issue is as confused as it is lurid and emotional. A "tremendous tax subsidy" given to "bigoted private clubs but withheld from those clubs which are sufficiently American to allow all comers, regardless of race, religion or color" constitutes significant state involvement in such alleged bigotry as to run afoul of the equal protection clause. (Petition for Certiorari p. 16).

The argument is completely and accurately answered in the opinion of the California Court (App. 11-19). The measure is not, as Petitioners allege, a tax subsidy for bigots which is withheld from real Americans. It is a partial exemption, not a subsidy.

It applies across the board to all property used as specified in the measure — and it applies equally to all who qualify without regard to any of their operating or admissions policies.

Petitioners' argument is completely laid to rest by the decision in *Walz* v. *Tax Commission,* (1970) 397 U.S. 664, in which this Court held that New York's grant of tax exemption to church property did not violate the religious clauses of the First Amendment. The court said:

> "The legislative purpose of a property tax exemption is neither the advancement nor the inhibition of religion; it is neither sponsorship nor hostility. New York, in common with the other states, has determined that certain entities that exist in a harmonious relationship to the community at large, and that foster its 'moral or mental improvement', should not be inhibited in their activities by property taxation or the hazard of loss of those properties for nonpayment of taxes. It has not singled out one particular church or religious group or even churches as such; rather, it has granted exemption to all houses of religious worship within a broad class of property owned by non-profit, quasi-public corporations which include hospitals, libraries, playgrounds, scientific, professional, historical, and patriotic groups. The State has an affirmative policy that considers these groups as beneficial and stabilizing influences in community life and finds this classification useful, desirable, and in the public interest. Qualification for tax exemption is not perpetual

or immutable; some tax exempt groups lose that status when their activities take them outside the classification and new entities can come into being and qualify for exemption.

". . .

"The grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state. No one has ever suggested that tax exemption has converted libraries, art galleries, or hospitals into arms of the state or put employees 'on the public payroll.' There is no genuine nexus between tax exemption and establishment of religion . . ." (397 U.S. 664, 672-675).

Similarly here the measure is neither "the advancement nor the inhibition of" private discrimination by golf clubs. It is neither "sponsorship nor hostility."

As the Court below found, Section 2.6 is an entirely neutral provision addressed solely to the manner in which certain property shall be assessed. It makes no distinction based upon what class of persons owns the property, or whether the property is or is not open to the public, or on the basis of any conduct of any kind of the owners or occupants. (App. p. 14). To be sure, if the property qualifies under the measure, its owner is entitled to its benefits whether he be a saint or a convicted felon, but that does not constitute California's stamp of approval either of felony or sainthood.

Petitioners' argument proves entirely too much, for if it were sound every service or benefit provided by the state is valid only if every person or entity who benefits from such a provision conducts himself in accordance with the same rigorous standards that the Fourteenth Amendment imposes upon the state itself. If the argument were correct, the Fourteenth Amendment would prohibit the state from giving any public assistance to veterans, orphans, indigents, the sick or the aged if it could be shown that any such persons engaged in discriminatory conduct.

The cases relied upon by Petitioners do not support their position here. The California Court has discussed the various types of government or official involvement in private conduct that is necessary to bring the Fourteenth Amendment into play and why those cases have no application here. (App. 11-19). The Seventh Circuit recently had occasion to differentiate substantially the same line of cases relied upon here by Petitioners in holding that a tax exemption and other state laws applicable to newspapers did not invoke the Fourteenth Amendment so as to give rise to a First Amendment claim against a private newspaper.

> *Chicago Joint Bd.* v. *Chicago Tribune* (7th Cir. 1970), 435 Fed. 2d 470 certiorari denied U.S. Law Week May 18, 1871.

It is significant that in both *Walz* and the *Chicago Joint Bd.* cases, the Courts held that a tax exemption

to a private entity did not violate the specific provisions of the First Amendment — the religious clauses and the free speech clauses. If that is so, it necessarily follows (as the Court below noted, (App. 19), that a tax exemption does not involve the state in the private conduct of the beneficiary of the exemption under the more general proscriptions of the Equal Protection Clause.

Respondent does not contend, as Petitioners suggest, that California policy is immune from the Fourteenth Amendment. Petitioners' difficulty stems from the fact that they complain about the alleged action of the operators of privately owned non-profit golf courses. That is not *state* action. It is *private* action. In *Walz*, this Court emphasized there was "no genuine nexus between tax exemption and establishment of religion." Here there is no genuine nexus between tax exemption and the alleged discriminatory conduct of private clubs.

There being none, Petitioners' main argument, like all their subsidiary ones, is wholly fallacious.

CONCLUSION

The decisions of the Courts below are plainly correct, and the Court of Appeal has written a sound and comprehensive opinion. No substantial or important federal question is raised by Petitioners. Certiorari should be denied.

Respectfully submitted,

JOHN D. MAHARG,
County Counsel

DeWITT W. CLINTON,
Deputy County Counsel

Attorneys for Defendant and Respondent.